To be Argued by:
RONALD S. LANGUEDOC
(Time Requested: 15 Minutes)

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Court of Appeals

of the

State of New York

DANIEL COLLAZO, MICHELLE COLLAZO, CHRISTOPHER ORTIZ, ANGELA WU, RENANA BEN-BASSAT, JONATHAN ROSS, BENJAMIN SHEFTER, MICHAEL SUH, JOHN WEISS, HOLLY WEISS, GABRIEL KRETZMER-SEED, NINA KRETZMER-SEED, CATHERINE ELLIN, NURIKA PADILLA, ALYSSA HENSKE, DANIEL ABAROA, DIANA POTTS, TIA TRATE, TYSON COLLAZO, RITA LOMBARDI, YANIRA SANCHEZ, DARIEL RODRIGUEZ, MEIR LINDENBAUM, SHARON GORDON, RUSSELL POLTRACK, MEGAN BOYCE, ELAN KATTAN, SHOSHANA COHEN, JONATHAN ABIKZER and ALEXANDRA ABIKZER,

Plaintiffs-Appellants,

– against –

NETHERLAND PROPERTY ASSETS LLC
and PARKOFF OPERATING CORP.,

Defendants-Respondents.

SUPPLEMENTAL BRIEF FOR PLAINTIFFS-APPELLANTS

HIMMELSTEIN, MCCONNELL, GRIBBEN,
DONOGHUE & JOSEPH LLP
Attorneys for Plaintiffs-Appellants
15 Maiden Lane, 17th Floor
New York, New York 10038
Tel.: (212) 349-3000
Fax: (212) 587-0744

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This supplemental brief is respectfully submitted on behalf of Plaintiffs-Appellants ("Plaintiffs") to address the impact of recent amendments to the Rent Stabilization Law on the instant pending appeal.

PRELIMINARY STATEMENT

The New York State Legislature, on June 14, 2019, passed the Housing Stability and Tenant Protection Act of 2019 (L. 2019 ch. 36) (hereinafter "HSTPA"). The HSTPA represents the most comprehensive changes to rent regulation in New York in decades. Amongst the revisions is new language added to the Rent Stabilization Law with regards to rent overcharge claims. The relevant language is as follows: "The Courts and [DHCR] shall have concurrent jurisdiction, *subject to the tenant's choice of forum*." (emphasis supplied) The HSTPA further provides: "This act shall take effect immediately and *shall apply to any claims pending* or filed on and after such date." (emphasis supplied)

This amendment to the rent laws was enacted in response to the Appellate Division's holding in this case, and the numerous subsequent decisions by Supreme Court judges in New York City, dismissing tenant-initiated lawsuits for rent overcharge and a declaratory judgment as to their rent stabilized status.

Prior to the enactment of the HSTPA it was already clear that Supreme Court had concurrent jurisdiction with DHCR over these types of cases, and that the

doctrine of primary jurisdiction could only be applied when special circumstances may warrant it. This intervening change of law requires courts to defer to tenants' choice of forum with regards to status and overcharge claims. The HSTPA expressly applies to all pending claims and therefore applies to this case. *Pechock v. New York State Div. of Hous. & Cmty. Renewal*, 253 A.D.2d 655 (1st Dep't 1998); *McDermott v. Pinto*, 101 A.D.2d 224 (1st Dept. 1984).

ARGUMENT

I. The Plain Language of the Act Requires the Court to Respect the Tenants' Choice of Forum

On June 14, 2019, the New York Legislature passed the HSTPA, and the Governor signed the HSTPA into law. Part F, § 3 of the HSTPA provides that the Emergency Tenant Protection Act is amended to read, in relevant part:

> Within a city having a population of one million or more . . . , [u]nless a tenant shall have filed a complaint of overcharge with the [DHCR] which complaint has not been withdrawn, nothing contained in this section shall be deemed to prevent a tenant or tenants, claiming to have been overcharged, from commencing an action . . . in a court of competent jurisdiction for damages equal to the overcharge and the penalty provided for in this section . . . . The courts and the [DHCR] shall have concurrent jurisdiction, *subject to the tenant's choice of forum*. (Emphases added.)

Part F, § 7 of the HSTPA confirms that the newly enacted law applies to Plaintiffs' claims in this action. Section 7 provides, in relevant part: "This act shall

take effect immediately and shall apply to any claims pending or filed on and after such date . . . ." *Id.* at 15; *see Pechock*, 253 A.D.2d at 655.

The HSTPA unequivocally states that: "The courts and [DHCR] shall have concurrent jurisdiction, subject to the tenant's choice of forum." *Id.* at 10-11. This intervening change in law makes even clearer, than it already was, that this Court must allow Plaintiffs to proceed with their case in Supreme Court, and that generalized notions of judicial deference to administrative agency's expertise do not justify the dismissal of this action. Because the HSTPA expressly permits Plaintiffs to proceed with their pending claims in court, the "tenant's choice of forum," Plaintiffs are entitled to reversal, reinstatement of their rent overcharge claims and to proceed with the underlying litigation.

This Court recently reiterated the fundamental principles that New York courts must apply when construing statutory language, including the core principle that "the Legislature is presumed to mean what it says". *Kuzmich v 50 Murray St. Acquisition LLC,* 2019 N.Y. LEXIS 1779,

> "[W]hen presented with a question of statutory interpretation, our primary consideration is to ascertain and give effect to the intention of the [l]egislature… Inasmuch as "the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" . . . As we have repeatedly explained, "courts should construe unambiguous language to give effect to its plain meaning" (*Matter of Daimler Chrysler Corp.*, 7 N.Y.3d at 660, 827 N.Y.S.2d 88, 860 N.E.2d 705). "Absent ambiguity the courts may not resort to rules of construction to [alter] the scope and application of a

> statute" because no such rule "gives the court discretion to declare the intent of the law when the words are unequivocal." *Kuzmich v. 50 Murray St. Acquisition LLC, supra* (internal citations omitted)

Put simply, the text of the statute could not be any clearer. The legislature has amended the Rent Stabilization Law to provide explicitly that: "The courts and [DHCR] shall have concurrent jurisdiction, *subject to the tenant's choice of forum*." HSTPA at 10-11 (emphasis added). "[T]he Legislature is presumed to mean what it says." *Kuzmich*, *supra*.

Defendants will presumably argue that despite the statute's clear language, this court should ignore that plain language and find that the legislature intended to provide, implicitly, that the tenant's choice of forum was, nevertheless, subject to being rejected at a court's discretion under the doctrine of primary jurisdiction. *See* letter of Adrienne Koch dated June 20, 2019. This argument is precluded under the basic tenets of statutory construction: "[N]ew language cannot be imported into a statute to give it a meaning not otherwise found therein." McKinney's Cons. Laws of NY, Book 1, Statutes § 94, at 190. Moreover, "a court cannot amend a statute by inserting words that are not there, nor will a court read into a statute a provision which the Legislature did not see fit to enact" *Id.*, § 363, at 525. Also, "meaning and effect should be given to every word of a statute and . . . an interpretation that renders words or clauses superfluous should be rejected." *Majewski v. Broadalbn-Perth Cent.-School Dist.*, 91, N.Y.2d 577, 583 (1998).

In *Majewski v. Broadalbn-Perth Cent.-School Dist., supra,* this Court analyzed whether amendments to the Workers' Compensation Law which, in relevant part, provided, only, that the subject provisions are to "take effect immediately" should apply to claims and rights then in existence. This Court, ultimately, held that they should not. In contrast, here, the relevant provision of the HSTPA leaves no doubt. The HSTPA not only takes effect immediately; it also, expressly, applies to all pending claims.

Defendants note, in their primary brief, a prior distinction under the Emergency Tenant Protection Act of 1974 ("ETPA", codified at McKinney's Unconsol. Laws §§ 8621, *et seq.)* outside of New York City ("in an city having a population of less than a million or a town and village") and New York City ("a city having a population of one million or more"). Defendants correctly points out that outside New York City, the ETPA, with regards to overcharge claims, explicitly provides: "DHCR has the authority to adjudicate claims (see McKinney's Unconsol. Laws § 8632(1)(1)(a)- (e)), but (b) as long as the tenant has not commenced a DHCR proceeding, the tenant has the absolute right to commence an action or interpose a counterclaim in a court of competent jurisdiction for damages (*id.* § 8632(a)(1)(f)) and (c) in any such court proceeding the court "may at any stage certify" the matter to DHCR, and DHCR may intervene in any such proceeding. *Id.* § 8632(a)(7).

However, in contrast, for New York City the statute provides only that DHCR's enforcement powers shall be as provided in the Rent Stabilization Law. Defendants then argue that "…*it contains no specification that at tenant retains the absolute right to sue in court* and, correspondingly, no provision for certification to (or intervention by) DHCR."[1] .

Defendants then go on to argue:

> "Although this has been held not to signify an intent to confer exclusive jurisdiction on DHCR for RSL claims, it indicates a clear statutory intent that – in contrast to claims under the ETPA arising outside of New York City (where the RSL does not apply and the statute expressly gives the tenant the choice of forum) – claims under the RSL are subject to the primary jurisdiction of DHCR. Had the Legislature intended to give tenants an absolute choice of forum for RSL claims, it would have provided as much in the ETPA at the same time it amended that statute to give tenants outside of New York City such an absolute choice."

While Plaintiffs disagree with Defendants' analysis, the HSTPA explicitly states that the tenant's choice of forum must be honored. Indeed, the HSTPA expressly and in no uncertain terms reveals the Legislature's intent to give tenants the absolute choice of forum by using those precise words: "subject to the tenant's choice of forum."

Defendant's argument, that somehow the doctrine of primary jurisdiction still applies *sui generis* to rent overcharge cases, fails because it suggests that, while

[1] Defendants' brief at 15-16

passing the most sweeping and radical revision to the Rent Stabilization Law in decades, the legislature included this new language – "subject to the tenant's choice of forum" –with the intent that it would have no impact at all. But "in interpreting statutory language, all parts of a statute are intended to be given effect and a statutory construction which renders one part meaningless should be avoided." *Anonymous v. Molik*, 32 N.Y.3d 30, 37 (2018) (internal citations omitted). Furthermore, "[i]n construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning." *Majewski v. Broadalbn-Perth Cent.-School Dist., supra, at 583.* Moreover, the Court's "preeminent responsibility . . . is to search for and effectuate the Legislature's purpose." *Fumarelli v. Marsam Dev., Inc.*, 92 N.Y.2d 298, 303 (1998). "An interpretation should be applied which is within the public policy that animates it." 97 N.Y. Jur. 2d Statutes § 194.

Here, the HSTPA was "designed to dramatically enhance tenant protections and reshape the state's housing landscape, after a months-long battle that galvanized tenant activists and dealt a blow to the state's powerful real estate industry." https://www.nytimes.com/2019/06/14/nyregion/rent-laws-ny-deal.html. The HSTPA was passed at a time while the principle of primary jurisdiction, as applied

to rent overcharge cases, was pending review before this Court. Indeed, dozens of legal services providers filed Amicus briefs in this case, arguing that, for far too long, the doctrine of primary doctrine has been used to deny tenants, like Plaintiffs herein, access to justice in our courts.[2] The legislature included this critical language, "subject to the tenant's choice of forum", in the HSTPA for a reason – to enhance the rights of tenants in our legal system – to allow tenants like Plaintiffs to litigate their overcharge claims in court if that is their preferred forum. The intent could not be any clearer, and the plain language of this provision controls. Accordingly, in the interest of justice and consistent with the plain language of the HSTPA, Plaintiffs respectfully request this Court reverse the lower courts' orders and remit for further proceedings.

II. Plaintiffs' Claims Are Currently Pending

With regards to overcharge claims, the HSTPA, in relevant part provides: "This act shall take effect immediately and shall apply to any claims pending or filed

[2] The Amicus briefs seeking reversal include briefs filed by, inter alia: Legal Services NYC, The Legal Aid Society, Brooklyn Defender Services, Catholic Migration Office, Housing Conservation Coordinators, Jasa/Legal Services For The Elderly In Queens, Make The Road NY, Mobilization For Justice, Lenox Hill Neighborhood House, Brooklyn Bar Association Volunteer Lawyers Project, CAMBA, Legal Services, Inc., Community Development Project at Urban Justice Center, DC 37 Municipal Employees Legal Services, Legal Services of the Hudson Valley, Mobilization for Justice, Inc., New York Legal Assistance Group, Queens Volunteer Lawyers Project, Inc., St. Vincent de Paul Legal Program, Inc., and The Western New York Law Center.

on and after such date." Plaintiffs' rent overcharge claims are currently pending before this Court.

In *Pechock, supra*, an Article 78 proceeding resulted in a final judgment dismissing a landlord's petition on a Division of Housing and Community Renewal ("DHCR") rent overcharge determination. The landlord appealed to the Appellate Division First Department ("First Department") and, while the appeal was pending, the legislature enacted major revisions of the Rent Stabilization Law via the Rent Regulation Reform Act ("RRRA") of 1997. The First Department applied the newly-enacted law to the landlord's appeal and reversed the lower court's decision. As the First Department explained, the RRRA, by its terms, applied to "any action or proceeding pending in any court' at the time of its enactment, including the instant appeal, which was pending in court at the time the statute became effective." *Id.,* at 655; see also *Zafra v. Pilkes,* 245 A.D.2d 218, 219 (1st Dep't 1997) (reversing lower court decision where appeal was pending at the time RRRA was passed) ("By virtue of the Act, and the unambiguous, unqualified language regarding its effective date, the Appellate Term order is reversed"); *McDermott v. Pinto, supra,* ("The instant appeal should be considered a pending proceeding.")

The posture of this case is indistinguishable from *Pechock, supra,* and *McDermott v. Pinto, supra,* and likewise relies on a statute that expressly provides that the new legislation applies to claims "pending" at the time of its enactment.[3]

Furthermore, in the context of a motion to renew and reargue, New York courts have repeatedly addressed the issue of whether a claim is pending. *See* CPLR § 2221. "[A] motion for leave to renew *based upon a change in the law* must be made prior to [i] the entry of a final judgment or [ii] *before the time to appeal has expired*." *Dinallo v. DAL Electric*, 60 A.D.3d 620, 621 (2d Dep't 2009) (emphasis added); *Swope v. Quadra Realty Tr., Inc.*, 28 Misc. 3d 1209(A), (Sup. Ct. N.Y. Co. 2010) (motion to renew deemed proper unless the "order of the court has been reduced to a final judgment and the time to appeal has expired"). If either no judgment has been entered or the time to appeal has not expired, a motion to renew remains timely and proper. *Glicksman v. Board of Education/Central Sch. Bd.*, 278 A.D.2d 364 (2nd Dept. 2000).

As explained in Siegel's practice review:

[3] Defendant's presumed reliance on *Matter of World Trade Ctr. Lower Manhattan Disaster Site Litigation*, 30 N.Y.3d 377 (2017) is misplaced. In *Matter of World Trade Ctr. Lower Manhattan Disaster Site Litigation,* this Court was asked to determine whether a claim revival statute, the effect of which revived the plaintiffs' time-barred causes of action for one year after its enactment, was violative of due process under New York State's constitution. Here, the HSTPA is not a claim revival statute; rather, it is a statute that was effective immediately and applied to all pending claims.

> While not governed by the arbitrary time limits that restrict the motion to reargue, the motion to renew based on new law must still be made while the case is sub judice, i.e., *still pending in the court system*. If it has already gone to judgment, *and is not on appeal*, and the time for appealing has expired, the case is closed and a motion to renew based on a change in the law will not avail.

123 Siegel's Prac. Rev. 4. (emphasis added); § 5:3.Motion for leave to renew—Timing, 8 N.Y.Prac., Civil Appellate Practice § 5:3 (2d ed.) ("a motion to renew would be untimely after the case has gone to judgment and the appeal time expired"); § 254. Motion to Reargue or Renew, Siegel, N.Y. Prac. § 254 (6th ed.) (motion to renew becomes untimely only "after the case has gone to final judgment, with the appeal time having expired").

The instant case is still pending in the court system. As such, the HSTPA applies.

CONCLUSION

For all the reasons set forth above, Plaintiffs' appeal must be granted; the Order dismissing the complaint should be reversed in its entirety, and this action should be remitted to the lower court for further proceedings

Dated: New York, New York
August 1, 2019

HIMMELSTEIN, McCONNELL, GRIBBEN, DONOGHUE & JOSEPH LLP
Ronald S. Languedoc
Jesse Gribben
Attorneys for Plaintiffs-Appellants

By: _____
Ronald S. Languedoc, Esq.
15 Maiden Lane, 17th Floor
New York, NY 10038
(212) 349-3000

NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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August 1, 2020

HIMMELSTEIN, McCONNELL, GRIBBEN, DONOGHUE & JOSEPH LLP
Ronald S. Languedoc
Jesse Gribben
Attorneys for Plaintiffs-Appellants

By: _____
Ronald Languedoc, Esq.
15 Maiden Lane, 17th Floor
New York, NY 10038
(212) 349-3000